

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

WAKE COUNTY

2016 JAN 13 PM 3:05

SUPERIOR COURT DIVISION

14 CVS 009941

WAKE COUNTY, C.S.C.

STATE OF NORTH CAROLINA, ex rel.)

ROY COOPER, Attorney General,)

Plaintiff,)

v.)

CAROLINA ENERGY GREEN)

SOLUTIONS, LLC, WILLIAM)

BERKELHAMMER, individually and in)

his capacity as owner and manager of)

CAROLINA ENERGY GREEN)

SOLUTIONS, LLC, MICHAEL)

STAPLETON, individually and in his)

capacity as manager of CAROLINA)

ENERGY GREEN SOLUTIONS, LLC,)

Defendants.)

**CONSENT JUDGMENT
and
PERMANENT INJUNCTION
(Defendant William Berkelhammer and
Defendant Carolina Energy Green
Solutions LLC)**

THIS MATTER came on before the undersigned Judge for entry of a Consent Judgment and Agreed Permanent Injunction. Roy Cooper, Attorney General of the State of North Carolina (hereinafter "Attorney General") and Defendant William Berkelhammer and his company Carolina Energy Green Solutions, LLC (collectively "the Defendants"), represented by Larry D'Amelio, Esq. having represented to the Court the terms and conditions of the Consent Judgment and Permanent Injunction ("Consent Judgment") set forth below represent a negotiated compromise; and the Court finding and concluding, based upon its examination of the record in this matter, the representations of the State and Defendants' assent hereto, as shown by their signatures below, entry of this Consent Judgment is in the public interest and represents an appropriate resolution to this litigation with respect to Defendants; and the Court finding further that:

I. FINDINGS

After reviewing the facts in this case, the Court independently makes the foregoing findings of fact and conclusions of law.

1. This Court hereby concludes it has both personal jurisdiction, over Defendants, as well as subject matter jurisdiction in this matter and resolving this matter with respect to Defendants through the terms and conditions set forth below would be just and appropriate.

2. On July 25, 2014, the State of North Carolina, Plaintiff, filed its Complaint and Motion for Preliminary Injunction.

3. Defendants in this case are the above-named defendants. Each defendant was properly served with a copy of the State's Complaint.

4. This Court hereby also concludes the allegations against Defendants, as made in the State's Complaint, if true, would constitute numerous violations of the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq.* Those unfair and deceptive practices include, but are not limited to:

- a) guaranteeing consumers a savings of 25% on home energy bills after the use and installation of its product,
- b) the telephone calls defendants placed to home owners in order to secure sales were regularly placed to North Carolina telephone numbers enrolled in the national Do Not Call Registry, and
- c) violating the buyers three day right to cancel, pursuant to N.C. Gen. Stat. § 25A-39(a); after the contract was signed, the next morning defendant would install their product in a consumer's house.

5. In the Complaint the State sought injunctive relief, refunds for customers, statutory civil penalties, costs, and other appropriate relief.

6. On October 3, 2014, Defendants filed their Answer in Wake County Superior Court.

7. On September 4, 2014, an Agreed Preliminary Injunction as to these Defendants was issued and filed in Wake County Superior Court.

8. Defendant Berkelhammer has been the managing member and principal officer of Defendant Carolina Energy Green Solutions, LLC. (hereinafter "Defendant CEGS") Defendant Berkelhammer has the actual authority to bind Defendant CEGS to this Consent Judgment.

9. By entering into this Consent Judgment, defendants neither admit nor deny any of the allegations in the Complaint or above, except as specifically stated herein. Only for purposes of this action, defendants admit the facts necessary to establish jurisdiction.

10. Defendant CEGS and Defendant Berkelhammer waive and release any claims they may have against Plaintiff and its agents related to this action.

11. Defendant CEGS, Defendant Berkelhammer, and Plaintiff waive all rights to a jury trial or to appeal or otherwise challenge or contest the validity of this Consent Judgment.

12. On March 3, 2015, Defendant Berkelhammer signed a sworn statement indicating he provided Plaintiff all of his financial assets including, bank accounts, tax records, retirement accounts, current income, and debts.

II. INJUNCTION

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED, with the consent of the State and Defendants and pursuant to N.C. Gen. Stat. § 75-14, Defendant Berkelhammer and Defendant CEGS are hereby permanently enjoined from the following activities:

A. Defendants shall not, directly or indirectly, perform or offer to perform home insulation work for North Carolina homeowners, collect money from homeowners for home insulation jobs, and or make calls to North Carolina numbers enrolled in the do not call registry or otherwise violate the provisions of N.C. Gen. Stat. § 75-100.

B. Defendants are prohibited from soliciting, directly or indirectly, North Carolina residents for the purpose of offering home insulation materials and are likewise prohibited from such solicitation on behalf of any third party offering home insulation materials or services.

IT IS FURTHER ORDERED, ADJUSTED, AND DECREED, with the consent of the State and Defendants that:

C. If any defendant violates any injunctive provision of this Consent Judgment, or if the individual defendants' judgment is not paid, the Attorney General may seek the imposition of appropriate civil penalties against any one or more Defendants for their own violations pursuant to N.C. Gen. Stat. § 14-425 and N.C. Gen. Stat. §75-15.2.

D. This Court retains jurisdiction in this matter in order to ensure Defendants' compliance with the foregoing provisions and to entertain any appropriate motions for enforcement or modification thereof;

III. PAYMENT TO THE STATE

A. Judgment in the amount of Three Million Dollars and No Cents (\$3,000,000.00) is entered in favor of Plaintiff State of North Carolina and against Defendants, jointly and

severally, as a civil penalty under N.C. Gen. Stat. § 75-105(a), said Judgment to be suspended provided that Defendants fully and timely comply with all other provisions of this Order and have made no misrepresentations regarding the Defendants' financial condition. The suspension of the \$3,000,000.00 monetary judgment will be lifted as to Defendant CEGS and Defendant Berkelhammer if, upon motion by Plaintiff, the Court finds Defendants failed to timely and fully disclose any material asset, materially misstated the value of any asset, made any other material misstatement or omission in the March 3, 2015 financial statement identified above, or otherwise fail to fully and timely comply with any other provision of this Order. If the suspension of the \$3,000,000.00 monetary judgment is lifted, the judgment becomes immediately due as to one or both Defendants, as appropriate, in the amount specified above (which the parties stipulate only for purposes of this Section represents the amount of the civil penalty for the violations alleged in the Complaint), less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order. The Court at that time may also calculate and award additional attorneys' fees to the State of North Carolina pursuant to N.C. Gen. Stat. § 75-16.1. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation brought solely by or on behalf of the Plaintiff, including in a proceeding to enforce Plaintiff's rights to any payment or monetary judgment pursuant to this Consent Judgment.

B. Upon entry of this Consent Judgment, judgment also is entered in favor of the State of North Carolina and against the individual defendants CEGS and William Berkelhammer collectively in the total amount of Twenty Three Thousand Five Hundred Dollars and No Cents (\$23,500.00) for attorneys' fees, investigative costs and for consumer restitution, consumer education, enforcement or other consumer protection purposes at the discretion of the Attorney

General. Within Ten (10) business days of the entry of this judgment, those defendants are ordered to pay this sum to the State of North Carolina (and if such payment is not timely made, the Court shall, upon notice and motion, vacate this Consent Judgment, and Defendants shall be responsible for Plaintiff's reasonable attorneys' fees associated with such nonpayment).

C. The Defendants represent the \$23,500.00 necessary to satisfy the judgment is in the possession of their counsel, and the Defendants consent to the transmission of that amount to the State via cashier's check sent via Federal Express next day delivery immediately upon execution of the Consent Judgment. Payment shall be made by cashier's check made payable to the "North Carolina Department of Justice," North Carolina Department of Justice, 114 West Edenton St., Raleigh, North Carolina 27602.

IV. RELEASE AND GENERAL PROVISIONS

A. Nothing contained in this Consent Judgment shall be construed to deprive any consumer or other person or entity of any private right under the law.

B. Nothing contained in this Consent Judgment shall be construed as approval, sanction or authorization of any act, practice, or conduct of Defendants.

C. Except as provided in Paragraph IV.D. below, this Consent Judgment fully resolves all claims asserted in the State's complaint, and all matters of dispute between the State and Defendant CEGS and Defendant William Berkelhammer with respect to the course of conduct alleged in the State's complaint occurring up to the date of entry of this Consent Judgment. This Consent Judgment is in full satisfaction of all such matters, and this Consent Judgment shall have preclusive effect for any such matters. Nothing in this Consent Judgment shall be construed to limit the authority of Plaintiff to prospectively enforce laws, regulations or

rules against Defendants, their successors and assigns with respect to conduct occurring after the date of entry of this Consent Judgment.

D. Nothing contained in this Consent Judgment shall be construed to release any of the State's rights, claims, and defenses against Defendant Michael Stapleton, which rights, claims, and defenses are expressly reserved.

E. The Court shall retain jurisdiction of this matter for the purposes of enabling any of the parties to this Consent Judgment to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this Consent Judgment, for the enforcement of compliance therewith, or for the punishment of violations thereof. The provisions of this Consent Judgment shall be enforceable by contempt proceedings and as provided in N.C. Gen. Stat. § 75-15.2.

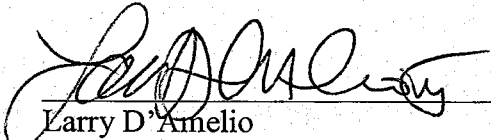
F. The parties are in agreement with the foregoing and affix their signatures below and consent to entry of this Final Judgment and Consent Decree.

SO ORDERED, this 13 day of January, 2016

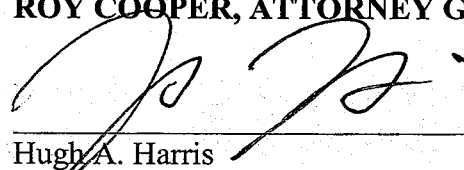

SUPERIOR COURT JUDGE

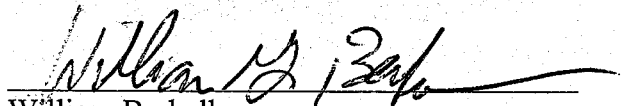
The parties, by and through, their respective counsel, hereby consent to the terms and conditions of the Consent Judgment as set forth above, and consent to the entry thereof.

D'AMELIO LAW FIRM, PLLC


Larry D'Amelio
Attorney for William Berkelhammer

**STATE OF NORTH CAROLINA, ex rel.
ROY COOPER, ATTORNEY GENERAL**

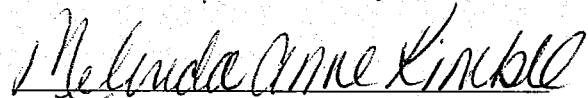

Hugh A. Harris
Assistant Attorney General


William Berkelhammer

STATE OF NORTH CAROLINA

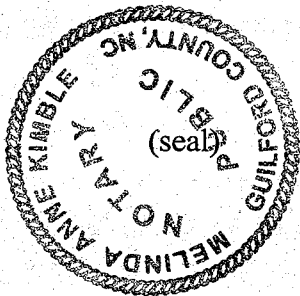
COUNTY OF Guilford

Sworn to (or affirmed) and subscribed before me this the 19 day of November 2015


(Signature of Notary Public)

Melinda Anne Kimble
(Printed Name of Notary Public)

My commission expires: 3/20/2017



William A. Berkelhammer
Carolina Energy Green Solutions, LLC
By William Berkelhammer, Member/Manager

STATE OF NORTH CAROLINA

COUNTY OF Cecil

I Melinda Anne Kimble, a Notary Public for said County and State, do hereby certify that William A. Berkelhammer (printed name and position), personally appeared before me this day and voluntarily acknowledged the due execution of the foregoing instrument on behalf of Carolina Energy Green Solutions, LLC.

Witness my hand and official seal this the 16 day of Dec, 2015.

Melinda Anne Kimble
(Signature of Notary Public)

Melinda Anne Kimble
(Printed Name of Notary Public)

My commission expires: 3/20/2017

